

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ASHLEY VINCENT DAVID,

Plaintiff,

vs.

TYNEIA G. MERRITT, ESQ.; et al.,

Defendants.

Case No: C 11-4090 SBA

**ORDER DIRECTING PLAINTIFF
TO FILE RESPONSES TO
DEFENDANTS' MOTIONS TO
DISMISS**

Defendant Jackie Worden filed a motion to dismiss on September 9, 2011. Dkt. 9. On October 17, 2011, Tyneia Merritt and Merritt Law, Inc. separately filed a motion to dismiss. Dkt. 16. Both motions are noticed for hearing on February 7, 2012.

Under Civil Local Rule 7-3(a), an opposition to a motion must be filed within fourteen days of the date the motion was filed, and the reply is due seven days thereafter. As such, Plaintiff's response to the first motion to dismiss was due by September 23, 2011, and her response to the second motion was due by October 31, 2011. To date, however, Plaintiff has not filed a response to either motion.

This Court's Standing Orders warn that the failure to respond to a motion may be deemed to be a consent to the granting of the unopposed motion. Dkt. 14 at 5. As such, it is well within the discretion of the Court to dismiss the action for failure to prosecute. See Fed. R. Civ. P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Nevertheless, mindful of its obligation to first consider to less drastic alternatives, the Court will afford Plaintiff one further opportunity to respond to the pending motions. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff shall have until January 27, 2012 to file and serve his response (i.e., either an opposition or a statement of non-opposition) to each of the pending motions to dismiss. Each response shall comply in all respects with the

1 Federal Rules of Civil Procedure and the Court's Civil Local Rules, including, without
2 limitation, Civil Local Rules 7-3 through 7-5. **PLAINTIFF IS WARNED THAT THE**
3 **FAILURE TO FILE HIS RESPONSES BY THIS DEADLINE AND/OR TO**
4 **COMPLY WITH THIS ORDER OR ANY OTHER APPLICABLE PROCEDURAL**
5 **RULES WILL RESULT IN THE DISMISSAL OF THIS ACTION.** In the event
6 Plaintiff timely files his responses, Defendants may file a reply seven days after the
7 deadline for Plaintiff's responses. The Case Management Conference and motion hearing
8 scheduled for February 7, 2012 are VACATED. The Court will adjudicate the motions
9 without oral argument. See Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b).

10 IT IS SO ORDERED.

11 Dated: January 19, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DAVID et al,

5 Plaintiff,

6 v.

7 MERRITT et al,

8 Defendant.
_____ /

9 Case Number: CV11-04090 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on January 20, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Ashley Vincent David
19 5417 Summerfield Drive
20 Antioch, CA 94531

21 Dated: January 20, 2012

Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk
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